

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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|----------------------------------|---|------------------------------|
| GUILLERMO HERRERA, III, |) | CIVIL ACTION NO. 8:15-CV-426 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | MOTION TO COMPEL |
| |) | |
| UNION PACIFIC RAILROAD |) | |
| COMPANY, A Delaware Corporation, |) | |
| |) | |
| Defendant. |) | |

COMES NOW the Defendant, Union Pacific Railroad Company (“Union Pacific”), and hereby moves this Court for an Order pursuant to Fed. R. Civ. P. 37 compelling the Plaintiff to produce the audio recordings from recorded statements given by Union Pacific witnesses Logan Newman, Dennis Dickison, Jeremy Marsing, and Braden Bradley. Plaintiff produced narrative summaries of the witness statements and marked them as exhibits at their depositions, but plaintiff refuses to produce the audio recordings which constitute their actual, complete statements. For the reasons set forth in its brief, the audio recordings should be produced. Defendant offers in support of this motion an index of evidence.

The Defendant represents that pursuant to NECivR 7.1(i), counsel for Defendant David J. Schmitt personally conferred via telephone with counsel for Plaintiff Jim Cox on November 28, 2016 at 4:15 pm, and after sincere attempts to resolve differences, the parties cannot reach an agreement.

UNION PACIFIC RAILROAD COMPANY, Defendant,

By: /s/ David J. Schmitt

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ITS ATTORNEYS

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2017, a true and correct copy of the foregoing was electronically filed with the Court using the CM/ECF system, which will send notification of such filing to James L. Cox, Jr., and there are no participants to send the foregoing document to by United States Postal Service.

/s/ David J. Schmitt

David J. Schmitt #19123

#636109